

COA No. 48111-1-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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In the Matter of the Personal Restraint of:

RONALD SORENSON,

Petitioner.

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PETITIONER'S REPLY TO STATE'S RESPONSE

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## I. ARGUMENT

A. The PRP is timely.

RCW 10.73.090, Collateral attack-One year time limit,

provides in relevant part:

(1) No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.

. . .

(3) For purposes of this section, a judgment becomes final on the last of the following dates:

(a) The date it is filed with the clerk of the trial Court; . . .

Here, the judgment and sentence was filed on March 8, 2012. (PRP, App. A). Mr. Sorenson appealed to the Washington Court of Appeals, Division II, No. 43199-8-II. The Court affirmed the convictions in an unpublished opinion filed January 28, 2014, but remanded for correction of scrivener's errors. His petition for review was denied by the Supreme Court, No. 89974-6, on July 9, 2014. The mandate was filed August 12, 2014. Thereafter, the order correcting/modifying judgment and sentence was entered on September 16, 2014.

The question is when the judgment and sentence became final. RCW 10.73.090. The answer is it became final on September 16, 2014, when the Clark County Superior Court entered the order correcting/modifying the judgment and sentence. *Cf. Soper v. Knafllich*, 26 Wn. App. 678, 680, 613 P.2d 1209 (1980) (time for filing notice of appeal begins to run from date of order correcting judgment). When a court's judgment is corrected or modified, it is not final until the order is entered correcting or modifying the judgment. *Presidential Estates Apartment Assocs. v. Bennett*, 129 Wn.2d 320, 326, 917 P.2d 100 (1996); *In re Pers. Restraint of Clark*, 168 Wn.2d 581, 585, 280 P.3d 156 (2010).

As noted by the Court of Appeals in its unpublished opinion, a defendant, as did Mr. Sorenson, may challenge an erroneous sentence for the first time on appeal. *State v. Bahl*, 164 Wn.2d 739, 744, 193 P.3d 678 (2008). The State conceded error as to the dates he committed the offenses in counts 2, 3, and 9. The remedy for a scrivener's error in a judgment and sentence is remand to the trial court for correction. See *State v. Naillieux*, 158 Wn. App. 630, 646, 241 P.3d 1280 (2010); CrR 7.8(a). Here, however, the errors corrected were not just clerical. They also substantively changed the dates to accurately reflect and support the crimes of conviction.

Furthermore, Mr. Sorenson waived his right to be present at resentencing, which right he would not have had if the correction/modification were merely ministerial or clerical. *State v. Ramos*, 171 Wn.2d 46, 48-49, 246 P.3d 811 (2011).

The State cites *State v. Barberio*, 121 Wn.2d 48, 846 P.2d 519 (1993), and *State v. Kilgore*, 167 Wn.2d 28, 216 P.3d 393 (2009), to support its position the PRP was untimely. But those cases addressed the question whether the orders on remand presented appealable issues. That is not the question here so *Barberio* and *Kilgore* are inapposite.

The correction of the “scrivener’s errors” was not simply clerical or ministerial. See *State v. Fort*, 190 Wn. App. 202, 246-47, 360 P.3d 820 (2015), *review denied*, 185 Wn.2d 1011 (2016). Indeed, it substantively corrected/modified the judgment and sentence for count 2: first degree child molestation involving BES, date of birth March 9, 1990; count 3: second degree child molestation again involving BES, date of birth March 9, 1990; and count 9: third degree child molestation, involving BLS, date of birth August 23, 1993; as the judgment and sentence reflected dates of commission that were outside those required to meet the age elements for the crimes charged in RCW 9A.44.083, .086, and

.093. (RP Vol. 4A at 553-59, 564-65). The original judgment and sentence stated incorrect dates for the crimes that neither supported the respective convictions for first degree, second degree, and third degree child molestation nor the sentences imposed. Although called scrivener's errors, they were more than that when the court exercised its discretion to change the dates so they supported the correct crimes of conviction. *Ramos, supra*. In these circumstances, the order correcting/modifying judgment and sentence was the final judgment under RCW 10.73.090(1).

The Clark County Superior Court entered the order correcting/modifying judgment and sentence on September 16, 2014. That is the date it became final as only then did the document accurately reflect the judgment and sentence, and thus the crimes of conviction, the trial court intended. *State v. Healy*, 157 Wn. App. 502, 516, 237 P.3d 360 (2010). It does not matter by what label a judgment and sentence is remanded by the appellate court to remedy a substantive error. The Court of Appeals in its opinion accepted Mr. Sorenson's challenge to the erroneous sentence for the first time on appeal. (Op. at 10). The errors were corrected/modified on September 16, 2014, and the judgment and

sentence became final on that day. The PRP is timely. RCW 10.73.090(1).

B. Sufficient evidence supports Mr. Sorenson's claim of ineffective assistance of counsel.

The State misapprehends the argument as to defense counsel's failure to interview witnesses. The need for further evidence to support this claim is unnecessary because counsel admitted to the trial court he was unprepared for trial. (RP 1 at 27-30). He had not interviewed defense witnesses at all and was not ready to present a defense. (*Id.*). The failure to investigate or interview witnesses in and of itself is an established basis for a claim of ineffective assistance. *State v. Ray*, 116 Wn.2d 531, 548, 806 P.2d 1220 (1991). No further evidence is required as the record speaks for itself and establishes ineffective assistance.

Defense counsel also represented to the court that he had not interviewed all of the alleged victims and had not done any investigation even though he had been on the case for six months. (RP 1 at 27-30, 44). This omission cannot be trial strategy or tactics. Mr. Sorenson stated in his declaration the anticipated testimony of defense witnesses and showed its relevance. (Sorenson Decl. at 8-17, 27). He stated with particularity what an



investigation would have revealed. (*Id.* at 18-26, 28, 31-32).

Furthermore, Mr. Sorenson provided the circumstances showing suggestive or implanted memory prompted the accusations. (*Id.* at 34 [first and second pages] -35).

As for the State's argument that defense counsel's failure to call a memory expert was a tactical decision, it is wholly speculative and neglects to comprehend the obvious. Funding was secured for a memory expert, but counsel did not follow through. (CP 49; RP 1 at 44). The need for such an expert was readily apparent because of the belated disclosure by the alleged victims of inappropriate touching triggered by Sabrina Sorenson's telling the girls about personally being molested. The expert could have evaluated the circumstances and timing of their recollection and formed an opinion whether it was a response to the suggestion of molestation. *State v. A.N.J.*, 168 Wn.2d 91, 112, 225 P.3d 956 (2010). Again, the record is clear and no further evidence is necessary to support his claim of ineffective assistance as to the expert witness issue.

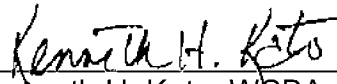
As for all other arguments raised by the State, Mr. Sorenson rests on his brief and declaration in support of the PRP.

## II. CONCLUSION

Based on the foregoing, Mr. Sorenson respectfully urges this Court to find his PRP timely, grant him relief, and remand for further proceedings.

DATED this 26<sup>th</sup> day of August, 2016.

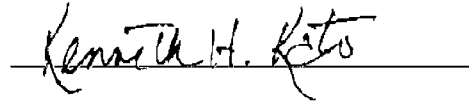
Respectfully submitted,



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## CERTIFICATE OF SERVICE

I certify that on August 26, 2016, I served a copy of the Reply Brief by USPS on Ronald Sorenson, # 355432, 191 Constantine Way, Aberdeen, WA 98520; and by email, as agreed, on Rachael Probstfeld at CntyPA.GeneralDelivery@clark.wa.gov.



# KATO LAW OFFICE

**August 26, 2016 - 11:23 AM**

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